

General Information Letter: Former employer is required to withhold Illinois income tax from payments made to retired employee under nonqualified pension plan.

September 11, 2000

Dear:

This is in response to your letter dated August 10, 2000 in which you state the following:

We are a payroll service in Wausau, Wisconsin and have a situation we need clarified from the State of Illinois. I spoke with Carole Leathers from the Illinois Department of Revenue and she referred me to your department.

We process a payroll for a Wisconsin employer that is making deferred compensation payments to a retired employee who lives in Illinois. The deferred compensation is based on a retirement agreement with the employee and is considered a non-qualified plan, not a part of a pension or annuity plan. The employee no longer works or performs any service to the employer.

Our question is – are these payments considered “wages” for the State of Illinois, and therefore, the employee needs to withhold Illinois State taxes?

Please respond to us in writing with your findings, so we may process the check properly.

According to the Department of Revenue (“Department”) regulations, the Department may issue only two types of letter rulings: Private Letter Rulings (“PLR”) and General Information Letters (“GIL”). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

According to your letter, since the employee no longer works or performs any service to the employer, our regulations will recognize these payments as “compensation paid in Illinois if paid to the individual while a resident of this State”. 86 Ill. Adm. Code 100.7010(g). The fact that the former employee worked in Wisconsin for a Wisconsin company does not effect the determination as to whether the deferred compensation payments are Illinois “wages”. Since he now lives in Illinois, payroll should withhold state taxes and remit the withholdings to Illinois.

For your convenience, enclosed please find Booklet IL-700 entitled “Illinois Withholding Tax Guide” and Booklet IL-700-T entitled “Illinois Withholding Tax Tables along with the following forms: IL-941, Illinois Withholding Allowance Worksheet, IL-501 and IL-W-3.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

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Sincerely,

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